

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ernest Oneal Smith,

Plaintiff,

v.

**Joey Preston (County Administrator); Robert Daly
(ACDC Director); Capt. Arlette Jones (Medical
Director); Cindy Haist (Head Nurse); and Officer
Doug Mize (ACDC Officer).**

Defendants.

C/A No. 8:06-274-CMC-BHH

ORDER

This matter is before the court on Plaintiff's *pro se* action filed pursuant to 42 U.S.C. § 1983 alleging Defendants' deliberate indifference to his medical needs in violation of the Fourteenth Amendment. Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on March 8, 2006. Plaintiff filed responses to the motion on March 13, 14, 16, and August 23, 2006.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Bruce Howe Hendricks for pre-trial proceedings and a Report and Recommendation. On January 16, 2007, the Magistrate Judge issued a Report recommending that the complaint be dismissed for failure to exhaust administrative remedies and for failure to state a claim. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff has filed no objections and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has

no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report and Recommendation only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Defendants’ motion to dismiss for failure to exhaust administrative remedies and for failure to state a claim is **granted** and this matter is dismissed without prejudice.

IT IS SO ORDERED.

Columbia, South Carolina
February 23, 2007

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE